



TRECAdvisor

Texas Real Estate Commission ★ Volume 15, Number 2 ★ May 2004

Governor Appoints Three to Texas Real Estate Commission John Walton Named as Chair



John Walton

Governor Rick Perry recently announced the appointment of three new members to the Texas Real Estate Commission and designated John Walton of Lubbock as Chair.

John Walton replaces Mike Brodie of Plano as Chair of the Commission. Brodie served seven years on the Commission, the last four as Chair. Walton has been a member of the Commission since 2001 and will serve as Chair at the pleasure of the Governor. His term on the Commission will end January 31, 2007. Walton is a licensed real estate broker and owner of Century 21 John Walton Realtors in Lubbock.

Governor Perry selected Elizabeth Leal of El Paso and Mary Frances Burleson of Aubrey to fill broker positions on the Commission and William Flores of Sugar Land to serve as a public member. Overall, the Commission is composed of six broker members and three public members.

Mary Frances Burleson of Aubrey is a broker and president of Ebby Halliday Real Estate, Inc. She is immediate past president of the North Dallas Chamber of Commerce and an Executive Member of the Greater Dallas Chamber of Commerce. She serves on the Board of Directors for the National Association of Realtors and is a former Chair of the Board of the Texas Association of Realtors. Burleson is also a member of the Southern Methodist University Planned Giving Council. She received a bachelor's degree from SMU. Her term will expire January 31, 2009.



Mary Francis Burleson

Elizabeth Leal of El Paso is a broker-associate with Coldwell Banker deWetter Hovious. She serves on the Board of Directors for Keystone Heritage Park, Border AIDS Partnership and is the Texas Member of the Year for Texas Women's Council of REALTORS. Leal is a senior real estate specialist (SRS), a certified residential specialist (CRS), and an accredited buyer representative (ABR). She is a graduate of Texas State Technical Institute and the Realtor's Institute. Her term will expire January 31, 2009.



Elizabeth Leal

William Flores of Sugar Land is Senior Vice President and Chief Financial Officer of Gryphon Exploration Company. He is a member of the Texas Society of Certified Public Accountants, American Institute of Certified Public Accountants, the Financial Executive Institute and serves as a director on the boards of PetroAlliance Services Company, Ltd., the PARC, Inc., and Texas A & M University Association of Former Students. He received his bachelor's degree from Texas A & M University and his master's degree from Houston Baptist University. His term will expire January 31, 2009.



William Flores

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The new members attended their first Commission meeting on April 19th with John Walton presiding as Chair.

THE MISSION of the Texas Real Estate Commission is to assist and protect consumers of real estate services, and foster economic growth in Texas. Through its programs of education, licensing and industry regulation, the Commission ensures the availability of capable and honest real estate service providers.

TEXAS REAL ESTATE COMMISSION



Meeting Highlights

April 19, 2004

The Texas Real Estate Commission held its regularly scheduled meeting at the TREC headquarters in Austin, Texas on Monday, April 19, 2004.

Chairman John Walton presided. Administrator Wayne Thorburn introduced the new members: Mary Frances Burleson of Aubrey, William H. Flores of Sugar Land, and Elizabeth Leal of El Paso.

Louise Hull of Victoria was elected Vice-chair and James N. Austin of Fort Worth was elected secretary.

Staff reports were presented. Assistant Administrator Sabrina Hassumani reported that there has been a steady increase in the number of licensees in the past 33 months.

After executive session, one recovery fund claim was approved for payment in the amount of \$50,000.

The Commission adopted amendments to 22 TAC §535.51, which changes the fee provisions in three license application forms. The Commission adopted amendments to 22 TAC §535.65(d) to permit accredited real estate schools to request MCE credit for instructors of real estate core courses using an existing form, and to §535.65(j) to permit a school to provide a roster of students who take alternate delivery method or correspondence courses 10 days after the end of the month in which the course was taken. The Commission adopted amendments to 22 §535.101 to increase application and renewal fees as described above in section 535.51.

The Commission voted to request an Attorney General's opinion to determine its authority to adopt amendments to 22 TAC §535.2, concerning broker responsibility. These amendments would set a minimum standard of service for brokers. The amendments state that a broker may not refuse to provide certain services, may not negotiate with a principal who is represented under an exclusive listing agreement and clarify that delivering an offer or counter-offer to the broker and his principal is not negotiating with the principal as long as the broker representing that principal consents to the delivery and the broker who makes the delivery does not attempt to discuss the terms or conditions of the offer or counter-offer. The language which will be submitted to the Office of the Attorney General (OAG) represents a compromise that would allow fee-for-service brokers to continue to provide the services desired by the consumer while protecting other brokers from liability or potential violations of the License Act. No further action will be taken on this particular rule amendment until the Attorney General makes a decision. The Commission also voted to ask staff to develop a disclosure statement for use by fee-for-service brokers for discussion at its next meeting on June 7, 2004.

The Commission voted to propose amendments to 22 TAC §§535.217 and 535.223. The amendments to section 535.217 would require that licensed inspectors disclose to their client that they are receiving a fee or other valuable consideration from a person other than their client or paying a fee or other valuable consideration. The amendments to §535.223 would allow an inspector to allocate additional space on page 2 of the inspection report for comments.

A schedule of rule reviews was proposed for 2004. The review of §§535.92-535.403 specifically was proposed.

The Commission approved a Memorandum of Understanding between the Texas Real Estate Commission and Real Estate Center at Texas A&M regarding the development of mandatory continuing education courses.

There was discussion concerning draft mandatory continuing education rules. The rules will be placed on the web site for comment. These rules were not proposed for any action.

After discussion, the Commission trimmed down the long term goals in the draft Strategic Plan for 2005-2009 and approved the plan with the changes.

The Commission granted a motion for probation in the Matter of Joseph Tome Slim, Hearing No. 03-258-032966.

The Commission set the next three meetings as follows: June 7, 2004, August 9, 2004 and October 18, 2004.

Official publication of the
Texas Real Estate Commission

Volume 15, Number 2

May 2004

Rick Perry
Governor

Commission Members:

John Walton
Chairman
LUBBOCK

Louise Hull
Vice-Chair
VICTORIA

James N. Austin
Secretary
FORT WORTH

Mary Frances Burleson
AUBREY

Ramon "Mick" Cantu
HOUSTON

William H. Flores
SUGAR LAND

Lawrence D. Jokl
BROWNSVILLE

Paul H. Jordan
GEORGETOWN

Elizabeth Leal
EL PASO

TREC Administrator
Wayne Thorburn

Desktop Publishing
Patricia Holder

The TRECAdvisor (ISSN 1047-4579) is published by the Texas Real Estate Commission (TREC) as an educational service to licensees in the state of Texas. The purpose of the newsletter is to promote a better understanding of the Real Estate License Act and to inform all licensees of changes affecting laws and practices in the real estate industry. The TRECAdvisor is funded through legislative appropriations and subscriptions collected from TREC licensees. The official text of TREC rules is filed with the Office of the Secretary of State, Texas Register. TREC encourages reproduction of this newsletter with the appropriate acknowledgments. Subscriptions are available for \$4.00 for two years. Single issues are \$1.00. To order a subscription or a single issue write to TRECAdvisor, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188. For information regarding TREC, contact:

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<http://www.trec.state.tx.us>

Commission Asks for Attorney General Opinion on Limited Service Standards

At its meeting on April 19, 2004, the Texas Real Estate Commission (TREC) authorized Administrator Wayne Thorburn to request an opinion from the Office of the Attorney General (OAG) regarding TREC's statutory authority to establish minimum service standards for a real estate broker who enters into an exclusive agency relationship to represent a party to a real estate transaction.

The Commission will request an opinion from the OAG on the following questions:

1. Does TREC have the statutory authority to revise 22 TAC §535.2 of the Rules of the Commission by adding the following provisions:

(d) In negotiating for his or her principal a broker may not refuse to provide the following services when such services are appropriate in the transaction:

- (1) accept and present to the principal offers and counter-offers to buy, sell, or lease the principal's property or property the principal seeks to buy or lease;**
- (2) assist the principal in developing, communicating, and presenting offers, counter-offers, and notices that relate to the offers and counter-offers; and**
- (3) answer the principal's questions relating to offers, counter-offers, and notices.**

(e) Under §1101.652(b)(22) of the Act a broker may not negotiate or attempt to negotiate the sale or lease of property with a principal with knowledge that the principal is a party to an outstanding written contract that grants exclusive agency to another broker. Under §1101.652(b)(27) of the Act, a broker may not aid, abet, or conspire with another to circumvent the Act. A broker who represents a principal under a listing contract that grants an exclusive agency to the broker may not instruct or authorize another broker who represents another party in the transaction to negotiate directly with the principal.

(f) When a broker delivers an offer or counter-offer to another broker, the broker is not negotiating or attempting to negotiate with a principal he or she does not represent by delivering a copy of the offer or counter-offer to the principal he or she does not represent so long as the broker representing the principal consents to the delivery and the broker who makes the delivery does not discuss or attempt to discuss the terms or conditions of the offer or counter-offer with the principal he or she does not represent.

2. If the answer to question number 1 is no, the Commission will ask the OAG whether TREC has the statutory authority to revise 22 TAC §535.2 by adding only subsection (f) above as subsection (d).

As background for the above questions, approximately 18 months ago, the Texas Association of Realtors (TAR) recommended that the Commission adopt a similar rule to require that all brokers must at a minimum provide the three services articulated in the recommended rule described above under 22 TAC §535.2. After a lawsuit was filed, the Commission repealed the rule to provide for additional public comment. Persons opposing any change to the current rule argue that the Commission lacks statutory authority to enact a provision that requires a broker to provide a minimum standard of service to a client in an exclusive agency relationship. In addition, they argue in part that any rule that claims to require a service when the client has not requested such service unfairly burdens the client's right to set the terms and conditions of a personal service contract.

Proponents of the rule argue that the Commission is authorized to adopt and enforce rules necessary to administer the Act and to enact rules to establish standards of conduct and ethics for persons licensed by the Commission. Further, proponents argue that section 535.2 of the current rules of the Commission require that "[a] broker is obligated under a listing contract to negotiate the best possible transaction for the principal, the person the broker has agreed to represent." Thus, the Commission may provide further clarification of the meaning of the term "negotiate" to include the three services described above. Finally, proponents argue that because a licensee may not negotiate with a represented party under section 1101.652(b)(22) of the Act and a licensee may not aid and abet a violation of the Act under 1101.652(b)(22), TREC rules should clarify what services the represented party may expect from their broker, and when the opposite side broker may deal directly with the represented party.

Under this variation of the rule for which the Commission requests an OAG opinion, a broker may not refuse to provide the services when appropriate to the transaction. In such a case, while the broker is not required to provide the services in all instances, the broker may not refuse to provide the services when requested and compensated by the broker's client.

In addition, the Commission will ask the OAG whether subsection (f) of the rule described above is within its statutory authority to adopt to provide clarification of the apparent ambiguity in section 1101.652(b)(22) and (b)(27) of the Act as described above. Section 1101.652(b)(22) prohibits a licensee from negotiating or attempting to negotiate a real estate transaction with a represented party. Unlike the laws governing attorney client relationships, there are no exemptions to the statutory provisions.

In a situation where a fee-for-service broker is in a limited exclusive agency relationship with a seller, the broker may wish to instruct other agents who represent potential buyers to negotiate the transaction directly with the seller. They contend that to the extent that the seller does not want the broker to provide additional services, anything more unnecessarily obliges the seller to pay for unwanted services. However, TAR contends that instructing other brokers to negotiate directly with the principal violates section 1101.652(b)(27), in light of section 1101.652(b)(22). Further, TAR contends that a minimum service standard is necessary to prevent the buyer's agents from unintentionally being perceived as and held liable for representing the seller as well.

The OAG request letter will be posted on the TREC website. Interested parties may brief the OAG on the issues raised by contacting the OAG Opinion Committee. More information about the opinion request process is available at the OAG website at www.oag.state.tx.us.

TREC to Propose Amendments to Mandatory Continuing Education Rules

After nearly two years of research and development, the Texas Real Estate Commission (TREC) will consider proposing rules at its next meeting on June 7, 2004 that will significantly change the mandatory continuing education (MCE) requirements for real estate brokers and salespersons to renew a license on active status. If adopted, the rules will change the process by which MCE courses and instructors are approved and will require all real estate licensees to attend a three hour legal update course and a three hour legal ethics course to fulfill the six legal hours of MCE to renew an active license under the Real Estate License Act (the Act).

The draft rules developed by the Commission incorporate the recommendations of the TREC Education Task Force, members of which were appointed by Chairman Mike Brodie in July 2002 to look at the present structure of MCE in Texas, analyze its effectiveness and make any necessary recommendations for improvements. In early meetings, the task force determined that the purpose of MCE should be "to expand and reinforce the knowledge, ethics, competency, and skills of Texas real estate licensees." The task force mission was to re-think and re-invent the structure, delivery, reporting and content of MCE.

The following summarizes the most significant changes to the MCE rules that will be proposed at the June 7, 2004 meeting:

- Required legal update and required legal ethics courses – All real estate licensees will be required to take a three hour legal update course and a three hour legal ethics course created for and approved by TREC to satisfy the 6 legal hours of mandatory continuing education required by Occupations Code section 1101.455.
- Instructor certification - Instructors who teach the legal courses must be certified to teach the courses by attending an instructor training course to be offered by the Real Estate Center at Texas A&M University; instructors must be pre-approved by the Commission prior to attending the instructor training course and obtaining certification to teach the required courses.
- Course updates - The required legal update and ethics courses will be replaced at the end of every odd numbered year (3 years for the first set of courses, every 2 years after).
- Course modification - The required course may be modified to supplement the courses with additional material or may be combined with elective courses.
- Elective courses - Elective courses to be used as credit for the remaining 9 hours required by section 1101.455 of the Act must be presentations of relevant issues that impact the practice of real estate or which increase or support the development of skill and competence; providers will be required to register each elective or combined course with the Commission.
- Core and CLE - Core and mandatory continuing legal courses may be accepted for satisfying MCE elective credit only.
- Distance education courses - Correspondence and alternate delivery method courses may be registered to satisfy elective credit only.
- Partial credit - A provider may grant partial credit to a student who attends less than the complete course registered with the Commission only if the segments of the course for which partial credit may be granted are not less than one hour in length; the student must attend at least 40 minutes of the class hour (a 50 minute hour) to get credit for attendance for that hour.
- Instructor application process - Instructor applicants must satisfy the Commission as to the applicant's honesty, trustworthiness and integrity; providers will be responsible for ensuring that instructors are competent to teach a particular subject.
- Effective date - The effective date of the new rules if adopted will be January 1, 2005. Under this draft, licensees on active status will be required to take the required legal update and legal ethics courses for the next and all subsequent renewals of their license after January 1. Thus a licensee may, but is not required to attend the required legal courses for his or her first renewal after the effective date, but the licensee is required to take the courses for the next and all subsequent renewals. For example, if your license expires July 31, 2005, you may but are not required to take the required courses for your 2005 renewal as long as you otherwise attend an approved course that meets the six-hour legal requirement in the Act. You must, however, take the required classes prior to your 2007 renewal. For licenses granted after the effective date, the licensee must attend the required courses to renew a license on active status.

Comments on the draft rules may be submitted to Loretta R. DeHay, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188, or to general.counsel@trec.state.tx.us.

No more "freebies" from title companies

Revised rule clamps down on giveaways

by Ron Walker

Recently, the Texas insurance commissioner adopted revisions to a rule that concerns items of value offered by title companies (procedural rule P-53). Concerns have been raised over the years when a title company, as part of its marketing efforts, offers brokers and agents items such as virtual tours, fliers, and postcards in the hope that the brokers or agents would direct business to the title company. The revised rule was adopted in response to those concerns.

What does P-53 prohibit?

With respect to relationships with brokers and salespersons, P-53 provides that a title company may not directly or indirectly pay or subsidize advertising or promotional materials or activities of any producer. The definition of producer includes real estate brokers or salespersons. The terms association or political action committee are not listed in the rule's definition of a producer. Nonetheless, a title company will not be able to circumvent the intent of P-53 through the guise of association.

Prohibited activities are those that have the effect of subsidizing the business or advertising or promotional activities of a producer. Such activities include, but are not limited to, providing or subsidizing the cost of signs; advertising a property or a group of properties for lease or sale; electronic or hard-copy media describing, promoting, or advertising a property or group of properties; or boxes or similar items in which to store such advertising media. Title companies are also prohibited from conducting, sponsoring, or promoting or paying for any part of an event benefiting a producer, such as an open house, holiday party, or reception or convention event. This includes providing prizes, food, beverages, gifts, decorations, entertainment, professional services, and other items.

P-53 also prohibits a title company from providing or paying for furnishings, postage, office supplies, electronic or hard-copy documents or media, computer hardware or software, telephones, copiers, fax machines, office equipment, vehicles, administrative, management, or staff services, rental space or office facilities for the use of any producer.

Clearly, one of the intended and likely consequences of revised P-53 is to eliminate "freebies" from title companies to real estate brokers and salespersons.

Does P-53 affect my relationship and dealings with other service providers such as lenders and surveyors?

No, P-53 regulates only the relationship between title companies and producers. However, P-53 mirrors similar prohibitions in the Real Estate Settlement Procedures Act (RESPA), which applies to the relationship between any settlement service providers in a real estate transaction.

May a title company purchase an advertisement in a magazine, such as a homes magazine owned by a broker?

P-53 does not prohibit a title company from purchasing advertisements in a broker's publications provided that the title company pays only a fair-market price for the advertisements.

While a title company may purchase an advertisement for itself in such a publication, the title company may not generate a publication advertising a broker's listings.

May title companies continue to sponsor or advertise at real estate industry association events?

In response to a Texas Association of REALTORS® inquiry, the Texas Department of Insurance stated that under P-53, "Title companies and title agents may certainly advertise their businesses, but the department will direct its enforcement resources to scrutinizing the essence of the advertising activity to determine compliance with the stated intent and purpose of the rule. Clearly, paying a producer an inflated price for advertising, over and above the normal market rate, would be a violation."

A better term than sponsor for this activity is advertiser, which more accurately reflects the allowable activity.

When selling advertising rights at association events to title companies or other settlement service providers, associations should enter into a written advertising agreement, define the specific advertising rights purchased, charge the advertiser no more than a fair market price for the advertising rights, and keep records that help establish the fair market price. TDI has received many inquiries about specific arrangements between title companies and local associations. To comply, the rights purchased under such arrangements must constitute bona fide advertising at fair market prices. The further the arrangement strays from traditional advertising rights, the more scrutiny TDI is likely to give it.

Ron Walker is director of legal affairs for the Texas Association of REALTORS®.



Disciplinary Actions

February—March 2004

Consumer Complaints

Calendar of Events

Commission Meetings:

June 7, 2004
(Austin)

August 9, 2004
(Austin)

October 18, 2004
(Austin)

Broker-Lawyer Committee Meetings:

August 5, 2004
(Austin)

Inspector Committee Meetings:

May 14, 2004
(Austin)

Web site:

<http://www.trec.state.tx.us>

Phone

(800) 250-TREC (8732)
or
(512) 459-6544

Guerrero, Alfredo M. (Killeen); license# 448348

Agreed reprimand of broker license, entered February 10, 2004; failed to properly monitor and train a sponsored salesperson regarding the handling of property management accounts and activities, in violation of §1(c) of The Real Estate License Act [§1101.803 of the Texas Occupations Code, effective June 1, 2003], and in violation of §15(a)(6)(W) of The Real Estate License Act [§1101.652(b)(1) of the Texas Occupations Code, effective June 1, 2003].

Anderson, Archie L. (Rockwall); license# 4838

Agreed 2 month suspension of professional inspector license, effective February 20, 2004, to be probated for 18 months effective March 20, 2004; Agreed administrative penalty of \$3,000; performing a real estate inspection in a negligent or incompetent manner, in violation of §23(l)(3) of The Real Estate License Act, Art. 6573a, Texas Civil Statutes [§1102.301 of the Texas Occupations Code, effective June 1, 2003]; failing to report as in need of repair conditions or symptoms which may indicate water penetration which are present and visible, such as improper grading around foundation walls or plumbing leaks and failing to report as in need of repair conditions that are present and visible and may be adversely affecting foundation performance, such as erosion or ponding, in violation of 22 TAC §535.228(a)(8) and (9)

Erickson, Virginia (Southlake); license# 276594

Agreed reprimand of broker license, entered February 20, 2004; Agreed administrative penalty of \$750 entered February 20, 2004; acting negligently or incompetently as listing agent when she knew, or should have known, the buyer failed to deposit the earnest money in a sales contract and failed to inform the seller of this significant information, in violation of §15(a)(6)(W) of The Real Estate License Act [§1101.652(b)(1) of the Texas Occupations Code, effective June 1, 2003]

Decker McKim Realtors, LLC (Seabrook); license# 433306

Agreed reprimand of limited liability company broker license, entered February 24, 2004; Agreed administrative penalty of \$500, entered February 24, 2004; failing to supervise adequately a sponsored salesperson who committed certain violations of The Real Estate License Act and the Commission's Rules in a real estate transaction, in violation of §1101.652(b)(1) of the Texas Occupations Code; failing to obtain the written consent of both parties to act as an intermediary in the transaction, in violation of §1101.559 of the Texas Occupations Code

McKim, George Decker (Seabrook); license# 83458

Agreed reprimand of broker license, entered February 24, 2004; while acting as the designated manager for a licensed limited liability company, failing to supervise adequately a sponsored salesperson who committed certain violations of The Real Estate License Act and the Commission's Rules in a real estate transaction, in violation of §1101.652(b)(1) of the Texas Occupations Code; failing to obtain the written consent of both parties for the limited liability company to act as an intermediary in the transaction, in violation of §1101.559 of the Texas Occupations Code

Burchell, Rita Rene (Plano); license# 495511

Agreed 1-month suspension of salesperson license fully probated for 6 months, effective February 27, 2004; acting negligently or incompetently as a buyer's agent when she received a termite report for the buyer but did not review it, nor provide a copy to the buyer until the date of closing, in violation of §15(a)(6)(W) of The Real Estate License Act [§1101.652(b)(1) of the Texas Occupations code, effective June 1, 2003]

Griffin, M. Lynne (Haslet); license# 431664

Revocation of broker license, effective February 27, 2004; conducted real estate brokerage activities either individually or through associated salespersons after her broker's license expired and subsequently filed a late renewal application wherein she responded "NO" to the question "Have you ever acted, or attempted to act, as a real estate broker at a time when not properly licensed?" and is guilty of procuring a real estate license for herself by fraud, misrepresentation, or deceit, or by making a material misstatement of fact in an application for a real estate license, in violation of §15(a)(2) of The Real Estate License Act [§1101.652(a)(2) of the Texas Occupations Code, effective June 1, 2003]

Wood County Realty, Inc. (Mineola); license# 392545

Agreed 3 month suspension of broker license fully probated for 30 months, effective March 29, 2004; acted negligently or incompetently and failed to properly account for money and failed to properly deposit monies for the following reasons. A salesperson it sponsored was authorized to conduct property management services but not directly supervised. The salesperson collected on behalf of an owner rents and security deposits, remitted insufficient checks for these funds to the owner, and otherwise converted the owner's funds for the salesperson's personal use. The owner obtained a judgment against the broker's designated officer. After a complaint was filed with the TREC, the broker and designated officer signed a promissory note to the owner for satisfaction of the judgment, in violations of §15(a)(6)(W) of The Real Estate License Act [§1101.652(b)(1) of the Texas Occupations Code, effective June 1, 2003], 22 TAC §535.146 and 22 TAC §535.159 of the Rules of the Texas Real Estate Commission

Smith, Traci Gero (San Antonio); license# 459095

Agreed reprimand of salesperson license, entered March 5, 2004; Agreed administrative penalty of \$1,000, entered March 5, 2004; acting negligently or incompetently by changing the listing price in the MLS without the written consent of the property owner, in violation of §15(a)(6)(W) of The Real Estate License Act [§1101.652(b)(1) of the Texas Occupations Code, effective June 1, 2003]; holding herself out as in charge of a real estate brokerage by advertising herself as "owner" although licensed only as a real estate salesperson, in violation of §15(a)(6)(P) of The Real Estate License Act [§1101.652(b)(23) of the Texas Occupations Code, effective June 1, 2003] and 22 TAC §535.154(e) of the Rules of the Texas Real Estate Commission

Rodriguez, Edward E. (San Antonio); license# 369597

Agreed 1 month suspension of broker license fully probated for 1 year, effective March 12, 2004; Agreed administrative penalty of \$500 due May 12, 2004; acting negligently or incompetently by failing to correctly input information on a HUD bid causing the buyer to lose her purchase and retaining cash earnest money in a file folder instead of in a trust or escrow account, in violation of §15(a)(6)(W) of The Real Estate License Act [§1101.652(b)(1) of the Texas Occupations Code, effective June 1, 2003]; permitting an inactive salesperson associated with his company to negotiate a transaction, in violation of §15(a)(6)(S) of The Real Estate License Act [§1101.652(b)(26) of the Texas Occupations Code, effective June 1, 2003]

Nguyen, Thanh Cong (Arlington); license# 444827

60-day suspension of broker license, effective March 12, 2004; acted negligently or incompetently and failed to properly account for or

remit money coming into his possession which belonged to another when he acted as a real estate agent and as a mortgage broker in a real estate sales transaction wherein the contract terminated, Mr. Nguyen executed the buyer's signatures to the termination and release of earnest money form and wrote in instructions to the title company to transfer the earnest money to a new contract without the buyers' authority, subsequently the title company issued a check to the buyer for release of the earnest money, Mr. Nguyen came to negotiate the check without the buyers' authority as he intended it to replace funds he maintained his mortgage company paid on behalf of the buyers, and not intending to harm anyone, after the hearing was held, he tendered the funds to the buyers, in violation of §15(a)(6)(E) and §15(a)(6)(W) of The Real Estate License Act [§1101.652(b)(9) and §1101.652(b)(1) of the Texas Occupations Code, effective June 1, 2003]; Broker also acted negligently or incompetently, associated with an unlicensed corporation that conducted real estate brokerage, and paid or divided commissions with an unlicensed corporation for its real estate brokerage when he conducted his real estate brokerage services through a corporation not licensed as a real estate broker, and failed to display the Consumer Information Form 1-1 in his place of business, in violation of §15(a)(6)(F), 15(a)(6)(S), and 15(a)(6)(W) of the Real Estate License Act [§1101.652(b)(11), §1101.652(b)(26), and §1101.652(b)(1) of the Texas Occupations Code, effective June 1, 2003], and 22 TAC §531.18 of the Rules of the Texas Real Estate Commission

Peterson, Gary Glenn
(Abilene); license# 429264

Agreed reprimand of broker license, entered March 24, 2004; failing to provide the statement of information about brokerage services to a party to a real estate transaction at the first face-to-face meeting, failing to use current standard TREC contract forms and failing to request that a title commitment be delivered in a timely manner, thereby acting negligently or incompetently in performing an act for which a person is required to hold a real estate license, in violation of §15(a)(6)(W) of The Real Estate License Act [§1101.652(b)(1) of the Texas Occupations Code, effective June 1, 2003]

Barnes, Mary Pat
(Mineola); license# 286883

Agreed 3 month suspension of broker license fully probated for 30 months, effective March 29, 2004; acted negligently or incompetently and failed to properly account for money and failed to properly deposit monies for the following reasons. A salesperson she sponsored through her corporation was authorized to conduct property management services but not directly supervised. The salesperson collected on behalf of an owner rents and security deposits, remitted insufficient checks for these funds to the owner, and otherwise converted the owner's funds for the salesperson's personal use. The owner obtained a judgment against the broker. After a complaint was filed with the Texas Real Estate Commission, the broker and corporation signed a promissory note to the owner for satisfaction of the judgment, in violation of §15(a)(6)(W) of the Real Estate License Act [§1101.652(b)(1) of the Texas Occupations Code, effective June 1, 2003], 22 TAC §535.146 and 22 TAC §535.159 of the Rules of the Texas Real Estate Commission

Administrative Complaints

Sommer, Mark Allen
(Addison); license# 311240

Agreed reprimand of broker license, entered February 5, 2004; Agreed administrative penalty of \$500, entered February 5, 2004; failing to complete mandatory continuing education hours within the 60-day period provided by 22 TAC §535.92(f) of the Rules of the Texas Real Estate Commission

Boone, Virginia Jacqueline
(Weatherford); license# 207326

Revocation of salesperson license, effective February 10, 2004; failing within a reasonable time to provide information to the Commission in response to Commission's request for same in connection with an application for renewal of real estate salesperson license, in violation of 22 TAC §535.91(a) of the Rules of the Texas Real Estate Commission

Wilson, Gerald Michael
(Houston); license# 216383

Agreed reprimand of salesperson license, entered February 13, 2004; Agreed administrative penalty of \$250, entered February 13, 2004; failing to complete mandatory continuing education hours and pay the \$200 fee within the 60-day period provided by 22 TAC §535.92(f) of the Rules of the Texas Real Estate Commission

Grimes, Harold E.
(Tyler); license#

Agreed reprimand of approval as a real estate instructor, entered February 13, 2004; Agreed administrative penalty of \$1,000, entered February 13, 2004; failing to teach a course in substantially the same manner represented to the Commission in the instructor's manual, in violation of 22 TAC §535.65(d)(2); failing to grade the course examinations with an unweighted passing score, in violation of 22 TAC §535.65(e)(2); failing to provide instructor evaluation forms for completion by students in every class, in violation of 22 TAC §535.65(d)(3); making a false representation to the Commission that a person had completed a requirement for course credit pursuant to 22 TAC §535.66(f)(1); aiding or abetting a person to circumvent a requirement for course credit in violation of 22 TAC §535.66(f)(2)

Tyler Real Estate College
(Tyler); license# 533

Agreed revocation of proprietary school accreditation, fully probated for 2 years, effective February 28, 2004; Agreed reprimand of \$2,000; making a false representation to the Commission that a person had completed a requirement for course credit in violation of 22 TAC §535.66(d)(2); aiding or abetting a person to circumvent a requirement for course credit in violation of 22 TAC §535.66(d)(3); failing to maintain records of each student enrolled in any course for a minimum of five years, and failing to retain the full class file for at least twelve months following the completion of the class, in violation of 22 TAC §535.65(i)(4); failure to provide instructor evaluation forms for completion by students in every class, in violation of 22 TAC §535.65(d)(3); failing to administer final exams consisting of sixty questions with an unweighted passing score of 70%, in violation of 22 TAC §535.65(e)(2); failing to teach a course in substantially the same manner represented to the Commission in the instructor's manual in violation of 22 TAC §535.65(d)(2); failing to provide adequate security for the completion of certificates and letters, in violation of 22 TAC §535.65(i)(3)

Bennett, Rochelle Denea
(San Antonio); license# 468961

Agreed reprimand of salesperson license, entered March 1, 2004; Agreed administrative penalty of \$250, entered March 1, 2004; failing to complete mandatory continuing education hours and pay the \$200 fee within the 60-day period provided by 22 TAC §535.92(f) of the Rules of the Texas Real Estate Commission

Petersen, Mica Whitman
(Dallas); license# 423931

Agreed reprimand of salesperson license, entered March 4, 2004; Agreed administrative penalty of \$250, entered March 4, 2004; failing within a reasonable time to provide information to the Commission in response to Commission's request for same in connection with an application for renewal of real estate salesperson license, in violation of 22 TAC §535.91(a) of the Rules of the Texas Real Estate Commission

Williams, Claudia Lynette
(Arlington); license# 445089

Agreed reprimand of broker license, entered March 9, 2004; Agreed administrative penalty of \$250, entered March 9, 2004; failing within a reasonable time to provide information to the Commission in response to Commission's request for same in connection with an application for renewal of real estate broker license, in violation of 22 TAC §535.91(a) of the Rules of the Texas Real Estate Commission

Sanders, Raymond Wayne
(Dallas); license# 161738

Agreed reprimand of broker license, entered March 11, 2004; Agreed administrative penalty of \$250, entered March 11, 2004; failing to complete mandatory continuing education hours and pay the \$200 fee within the 60-day period provided by 22 TAC §535.92(f) of the Rules of the Texas Real Estate Commission

Anderson, Robert Michael
(Rockwall); license# 168751

Revocation of salesperson license, effective March 16, 2004; failing within a reasonable time to provide information to the Commission in response to Commission's request for same in connection with an application for renewal of real estate salesperson license, in violation of 22 TAC §535.91(a) of the Rules of the Texas Real Estate Commission

Simpson, Carlton Skinner
(Bandera); license# 279701

Agreed revocation of broker license fully probated until April 30, 2005, effective March 19, 2004; violation of term and condition of his probationary license for failure to make all of the payments to repay the Real Estate Recovery Fund as set forth in the Order of November 7, 2000

Leal, Arthur III
(Lubbock); license# 463842

Agreed reprimand of salesperson license, entered March 23, 2004; Agreed administrative penalty of \$250, entered March 23, 2004; failing to complete mandatory continuing education hours and pay the \$200 fee within the 60-day period provided by 22 TAC §535.92(f) of the Rules of the Texas Real Estate Commission

Lake, Clayton Wayne
(Hobson); license# 505618

Revocation of salesperson license, effective March 29, 2004; failing within a reasonable time to make good a check issued to the Commission and to pay the processing fee, in violation of §1101.652(a)(4) of the Texas Occupations Code and §534.2(b) of the Rules of the Texas Real Estate Commission

Denkhaus, Terry
(Frisco); license# 470210

Revocation of salesperson license, effective March 29, 2004; failing to complete mandatory continuing education hours and pay the \$200 fee within the 60-day period provided by 22 TAC §535.92(f) of the Rules of the Texas Real Estate Commission

TREC Adopts **Changes to Alternative Education Licensing for** **Professional Real Estate Inspectors.**

The Texas Real Estate Commission adopted a rule at its April 19, 2004 meeting to increase core inspection classroom hours required to become licensed as a Professional Real Estate Inspector through the "alternative education" method effective January 1, 2005. This method allows one to apply for a Professional Real Estate Inspector license without practical experience by completing a certain number of core inspection classroom hours (where no experience in the industry is required). Currently, the requirement is 188 core inspection classroom hours, 8 of which must be in the Standards of Practice and 20 hours of course credit each in structural, mechanical (including appliances, plumbing, and HVAC components) and electrical systems found in improvements to real property.

The Commissioners voted to revise the proposed rule to allow 10 percent of the total time required on any of the topics to be spent doing onsite fieldwork. The time allotted to the onsite fieldwork can not include travel time to the site.

The revisions replace the current classroom hours requirement of 20 hours of course credit each in structural, mechanical and electrical systems with 320 additional hours in specific core inspection courses as defined in the rules. Effective January 1, 2005, persons applying under the "alternative education" method must complete a total of 448 Core inspection hours. The breakdown of the additional 320 hours, including required courses, subjects and subtopics is detailed in the rules which are posted on the TREC website.

Enforcement Questions and Answers

These and other questions and answers may be found on TREC's web site at
<http://www.trec.state.tx.us>

Q. Is it legal for a licensed real estate agent in a transaction to also be the loan officer in the same property sale transaction?

A. A licensed real estate agent, who is also licensed to be the loan officer, may act in both capacities in the same transaction under the Texas Real Estate License Act. The fact that the licensee is acting in this dual capacity should be disclosed to the licensee's client. In addition, if the licensee is receiving a fee from someone other than the licensee's client, the licensee must obtain the client's consent before receiving the fee. Because TREC does not regulate mortgage brokers or mortgage loan officers, you may wish to contact the Texas Savings and Loan Department at www.tsls.state.tx.us (which regulates brokers and loan officers) to be sure you are not in violation of any of their statutes.

Q. Does the "Third Party Financing Condition Addendum", TREC form 40-1, effective for use 4-1-04, address the date of the appraisal of the property or does it strictly address the "buyers" application and ability to finance?

A. The addendum does not contain an express provision for obtaining an appraisal by a certain date. The first paragraph does contain a blank for inserting the number of days which the buyer has to notify the seller in writing that financing approval cannot be obtained. The term "financing approval" relates to the buyer's assets, income, and credit history, not to an appraisal of the property.

Q. I am a licensed broker. May I maintain an assumed name and office in one county and use my home located in a different county as my main office address?

A. You can use your home office as your main office address and apply for a branch office license for any other location. If you use a different name for your second office, you will need to submit notification to the Commission of the assumed name or dba. The Commission considers a "branch office" as a place where the licensee meets with clients and customers to transact business. Each branch office must be licensed.

Q. Please tell me where I can find the law that states that a real estate agent has ethical, fiduciary and other obligations or duties to a person with whom he has a contract.

A. Pursuant to §1101.557 of The Real Estate License Act (License Act) Chapter 1101, Texas Occupations Code, a real estate license holder who represents a party in a real estate transaction acts as that party's agent. The agency relationship creates a "fiduciary duty" that the agent owes to the principal. A further description of disclosures regarding agency that licensees are required to provide are found in §1101.558 of the License Act. Additionally, §531.1, §531.2 and §531.3 of the Rules of the Texas Real Estate Commission further describe the duties of fidelity, integrity and competency. You may access the [Texas Real Estate License Act](#) and the Commission's [Rules](#) on the TREC web site.

Q. We signed a listing agreement to sell our home with an agent for a local real estate company. A few weeks after signing, the agent moved to a different real estate company. She has been calling us to try to get us to sign a new contract with her at the new company. We want to stay with the company we started with. What is the status of our listing agreement contract with the first real estate company?

A. Unless the agent and the first real estate company have some special agreement whereby she takes all her listings with her to her new company, your listing agreement contract is with the company and not the agent. You should review your listing agreement contract carefully to determine with whom you have contracted. If the agent changed companies and sponsoring brokers, and there is no arrangement with the first company, she could be in violation of the Real Estate License Act by negotiating or attempting to negotiate the sale of your property. However, if she is simply soliciting your business, she would not be in violation of our Act or Rules.

Q. I am a licensed agent. I have a client who is interested in looking at property that is for sale by owner (fsbo). May I contact the owner to ask if I can bring a client to see the property and/or view the property in case other clients ask about it. May I ask them if they will pay me a commission if I find the buyer?

A. You would not be in violation of the Texas Real Estate License Act or the Rules of the Texas Real Estate Commission by contacting a seller who is not represented by an agent. The seller has no obligation to pay a commission to you even if you do find a buyer for his home.

Q. I have noticed, in newspapers and on web sites, that persons from outside the state of Texas are placing ads to sell timberland located in Texas. The ads do not contain any information that the contact person in the ad is a Texas licensee. Is this legal?

A. Under Texas licensing laws, a person not located in Texas only needs a license to sell property in Texas if the buyer and seller are legal residents of the state and property is located wholly or in part in Texas. If all three criteria are not present, the agent does not need a Texas license as long as they are physically not in the state.

Q. I live in an apartment complex. I told my manager about mold that is on my floor and in my air conditioning vents. The manager sent maintenance to look at it, and they sprayed something in the vent. Is this enough to take care of the problem? Am I in danger? Can you help me?

A. In general, the Commission handles the licensing and discipline of real estate agents. The Texas Department of Health has been given the responsibility by the legislature of regulating mold assessors and remediators and other indoor air quality related issues. You may want to contact them, or visit their web site at www.tdh.state.tx.us. However, your first step should probably be to contact your local tenant's association for guidance. Ultimately, if you cannot get the mold issue properly taken care of to your satisfaction, you may

want to consult with a private attorney to discuss your legal options.

Q. I have property listed for sale with a TREC licensee. Am I allowed to place and pay for an advertisement of the property in the newspaper or on the internet with the licensee's and my phone numbers?

A. The Commission regulates real estate licensees and their conduct. As far as your advertisements, whether in the newspaper or on the internet, we cannot tell you what you can or cannot do. However, if the agent's telephone number is placed in your advertisement, that would appear to be an advertisement by the real estate agent. As such, the advertisement would be subject to the requirements of the statutes and rules that govern his activities, and they would, therefore, need to comply with the Commission's advertising requirements. If the agent's telephone number is listed, the ad must also include the name of the agent and the agent's broker. Failure to include this information might lead to a complaint being filed against the agent.

Q. Is a licensee required to disclose to a potential buyer that a registered sex offender lives on the same street as the property being purchased?

A. No. Neither the statutes and rules that govern a licensee's activities nor the Texas Code of Criminal Procedure requires a licensee to disclose this information to a prospective buyer of property. The Code of Criminal Procedure, Art. 62.045 (e) states, "An owner, builder, seller, or lessor of a single-family residential real property or any improvement to residential real property or that person's broker, salesperson, or other agent or representative in a residential real estate transaction does not have a duty to make a disclosure to a prospective buyer or lessee about registrants under this chapter (*'registrants under this chapter' are defined as persons who have been convicted of certain enumerated sex offenses in this state or any other state*). To the extent of any conflict between this subsection and another law imposing a duty to disclose information about registered sex offenders, this subsection controls."

Q. I am a real estate agent and my husband is a real estate inspector. May I recommend him to potential buyers to conduct inspections for them?

A. Under the Rules of the Texas Real Estate Commission, Section 535.156(b), you have a duty to place the interest of your principal above your own. You must deal honestly and fairly with all parties, but you represent only the principal and owe a duty of fidelity to that principal. The Canons of Professional Ethics and Conduct for Real Estate Licensees contained in the Rules of the Texas Real Estate Commission state what is expected under the law and what your obligations are under the law. The Rules may be found on our web site at www.trec.state.tx.us/formslawspubs/rules_codes/trecrules.asp. We recommend that at the very least you inform potential buyers that the inspector is your husband, and you should make it clear to them that they have the right to choose any inspector they wish to inspect the property.

Q. I purchased a home three months ago. I gave money to my agent to pay an appraiser. The appraiser has recently told me that the agent refuses to pay him. I contacted the agent and the agent refuses to refund the money to me. What can I do?

A. A licensed real estate agent is required to properly account for or remit money coming into his or her possession which belongs to others. A licensee is also prohibited from commingling money that belongs to others with the licensee's own money. If a licensee has taken money from you for the purpose of paying the appraiser and has kept the money or applied it for some other purpose, you may have grounds to file a complaint with us. If a complaint were to be filed with the Commission regarding this issue, we may take disciplinary action against the agent's license, however, we cannot order the licensee to pay the money back to you. You would need to consult a private attorney about filing a lawsuit to recover your money.

Q. Does an agent receive a federal income tax Form 1099 from the title company reflecting the amount of commission paid to the agent for tax purposes? If not a 1099 form, does the agent receive any document stating the commission earned?

A. Income tax forms or payment of income taxes do not fall under the jurisdiction of this Commission. We suggest you present your question to your broker, the title company, your income tax preparer or the Internal Revenue Service.

Q. I am a licensed salesperson, and I wish to form a corporation. Since I am a "salesperson", would I obtain a broker license for my corporation through TREC even though I am not a broker?

A. It is permissible for a salesperson to form a corporation or a limited liability company (LLC). If the corporation or LLC is engaged in the business of real estate in any form, even if commission checks are run through the corporation or LLC and nothing more, it must be licensed by TREC. Corporations and LLC's are given the designation of "broker" by the Real Estate License Act and Rules. TREC laws require an officer of the corporation or a manager of the LLC be named as the "designated officer" for the corporation or "designated manager" for the LLC. The designated officer or manager must be a licensed broker.

FOR YOUR OWN GOOD . . . CHECK THE EXPIRATION DATE OF YOUR LICENSE

It is your responsibility to ensure that your license is renewed in a timely manner. Any education you might require must be completed before your license expiration date if you want to maintain an active real estate license, unless you pay an additional \$200 fee and complete your MCE within 60 days of the expiration date of your license.

Renewal forms are sent out to all licensees and may also be obtained on our website. The Texas Real Estate Commission is not responsible for U.S. Postal Service delivery or knowing where to find you if you have moved and have not filed a change of address with our office. Failure to receive a renewal notice does not provide a valid excuse for not renewing your license.